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7 **IN THE UNITED STATES DISTRICT COURT**
8 **IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**

9 NATHEN BARTON,

10 Plaintiff,

11 v.

12 JOE DELFGAUW, XANADU
13 MARKETINGITNC., THE CREDIT PROS
14 INTERNATIONAL CORPORATION,
15 EXPERIAN INFORMATION
16 SOLUTIONS INC., LGNB LLC,
17 STARTER HOME INVESTING INC,
18 TORT EXPERTS LLC, LAW OFFICE OF
19 TOM WAGSTAFF, JR., LLC, LEARNER &
20 ROWE, PC DV INJURY LAW PLLC, &
21 JOHN DOE 1-10,

22 Defendants.

CASE NO. 3:21-cv-05610-RJB

**ANSWER AND COUNTERCLAIM OF
DEFENDANTS JOE DELFGAUW,
XANADU MARKETING INC.**

JOE DELFGAUW and ZANADU
MARKETING INC.,

Counterclaimants,

v.

NATHEN BARTON,

Counter Defendant.

**ANSWER AND COUNTER-CLAIM OF DEFENDANTS JOE
DELFGAUW, XANADU MARKETING INC**

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1204 Cleveland Avenue
Mount Vernon, WA 98273
206-242-5529

COMES NOW defendants JOE DELFGAUW and XANADU MARKETING INC and answer the Complaint as follows: There are no paragraph numbers. Defendants respond to each paragraph in order.

I. BASIS FOR JURISDICTION

Defendants lack sufficient personal information to admit or deny the information as to the residence of Plaintiff and leave Plaintiff to its proofs as to the remaining allegations in this paragraph.

Defendants admit that if Plaintiff lives in Washington that venue and jurisdiction are proper in this Court. Defendants lack sufficient personal information to admit or deny the information as to the residence of Plaintiff and leave Plaintiff to its proofs as to the remaining allegations in this paragraph.

II. THE PARTIES TO THE LITIGATION

Defendants lack sufficient personal information to admit or deny the information as to the residence of Plaintiff and leave Plaintiff to its proofs.

Page 2, Lines 15-16: Deny as to Xanadu Marketing Inc.. It's address is 956 3 Mile Road N.W., Grand Rapids, Michigan 49544

Page 2, Lines 17-20: Admit as to Xanadu's registered agent.

Page 2, Lines 21-23: As to Joe Delfgauw's address, Defendants deny the allegations. Admit that Joe Delfgauw is the President and Secretary of Xandau Marketing. Defendants lack sufficient information to admit or deny the remaining allegations and therefore leave Plaintiff to his proofs

Page 2 Line 24 – Page 3 Line 1-2. Admit the facts in this paragraph as to Xanadu Marketing.

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Page 3, Line 3-5: Denied.

Page 3, Lines 6-18: Defendants lack sufficient personal knowledge as to the information in the paragraphs, and therefore leave Plaintiff to its proofs.

Page 3, Lines 19-20: Denied. The address is 956 Three Mile Rd N.W., Grand Rapids, MI 49544.

Page 3, Lines 21-22: Admit.

Page 4, Lines 1-18 Defendant lacks sufficient information to admit or deny the information contained in these paragraphs leaves Plaintiffs to its proofs.

Page 4, Line 19: This is not an allegation and needs no answer.

Page 4 Line 20: Denied.

III. STATEMENT OF CLAIM

Page 4 Lines 22 – Page 5, Lines 1-4: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Text Messages from SMS Short Code 33959

Page 5 Lines 5- 22: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Page 6 Lines 1-9: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs. As further response, Defendant Xanadu Marketing denies that the links listed are owned or controlled by Defendant Xandau Marketing.

Page 6 Lines 10-22 ½.: Defendants admit the allegations contained in these paragraphs, except for line 15, which is a question and not an allegation that deems a response.

Page 6 Lines 22 ½ - 24 and Page 7, Lines 1-2: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

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Text Messages from SMS Short Code 365365

Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Text Messages from (803) 618-8038

Page 7 Lines 4-14: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Page 7 Lines 16-19: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Page 7 Line 20-21 through Page 8, Lines 1-2: To Defendants' knowledge, Tax Axe is a d/b/a of Tax Planning Group Inc. and that the taxaxe.org is a website that is hosted on the same internet server as Xandau Marketing, but deny that this indicates anything else or further allegations.

Page 8, Lines 3-7: Admit.

Page 8, Line 8: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Solicitations from 1st Time Home Buyer Program Inc.

Page 8, Lines 10-23 Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Page 9, Line 1-4: Admit, however, the address is wrong, and Defendants deny that allegation.

Page 9, Lines 6-8 Admit.

Page 9 Lines 9-12: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

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Enter the Credit Pros International Corporation

Page 9 Lines 14-22 through Page 10 Lines 1-2: Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

More about (360) 318-7867

Page 10, Lines 4-10: Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Enter *ApexPageBuilder.com*

Page 10, Lines 12-15: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Page 10 Lines 16-18: Admit

Page 10 Lines 19-24 though Page 11, Lines 1-2: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Page 11, Lines 3-4 ½: Deny.

Page 11, Lines 4 ½ - 8: Admit the listed persons are members of an entity “Assisting Renters”.

Page 11, Lines 9-21: Defendants lack sufficient information on which to form a belief and therefore Plaintiff to its proofs.

Roundup Lawsuit

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Roundup Lawsuit unsolicited call #1

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1 Defendants lack sufficient personal information to admit or deny the allegations
2 contained in the this Section and leave Plaintiff to its proofs.

3 **Roundup Lawsuit unsolicited call #2**

4 Defendants lack sufficient personal information to admit or deny the allegations
5 contained in this Section and leave Plaintiff to its proofs.

6 **Roundup Lawsuit unsolicited call #3**

7 Defendants lack sufficient personal information to admit or deny the allegations
8 contained in this Section and leave Plaintiff to its proofs.

9 **Roundup Lawsuit unsolicited call #4**

10 Defendants lack sufficient personal information to admit or deny the allegations
11 contained in this Section and leave Plaintiff to its proofs.

12 **Roundup Lawsuit unsolicited call #5**

13 Defendants lack sufficient personal information to admit or deny the allegations
14 contained in this Section and leave Plaintiff to its proofs.

15 **Enter Tort Experts LLC**

16 Defendants lack sufficient personal information to admit or deny the allegations
17 contained in this Section and leave Plaintiff to its proofs.

18 **Zantac Unsolicited Phone Call #1**

19 Defendants lack sufficient personal information to admit or deny the allegations
20 contained in this Section and leave Plaintiff to its proofs.

21 **Talcum Powder Unsolicited Phone Call #1**

22 Defendants lack sufficient personal information to admit or deny the allegations
contained in this Section and leave Plaintiff to its proofs.

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Talcum Powder Unsolicited Phone Call #2

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

“You are receiving this message because you have previously opted in on injury helpdesk survey path”

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Auto Accident Unsolicited Phone Call #1

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Paraquat Unsolicited Phone Call #1

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Paraquat Unsolicited Phone Call #2

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Paraquat Unsolicited Phone Call #2

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Elmiron Unsolicited Phone Call #1

Defendants lack sufficient personal information to admit or deny the allegations contained in this Section and leave Plaintiff to its proofs.

Elmiron Unsolicited Phone Call #2

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1 Defendants lack sufficient personal information to admit or deny the allegations
2 contained in this Section and leave Plaintiff to its proofs.

3 **Elmiron Unsolicited Phone Call #3**

4 Defendants lack sufficient personal information to admit or deny the allegations
5 contained in this Section and leave Plaintiff to its proofs.

6 **Elmiron Unsolicited Phone Call #4**

7 Defendants lack sufficient personal information to admit or deny the allegations
8 contained in this Section and leave Plaintiff to its proofs.

9 **Elmiron Unsolicited Phone Call #5**

10 Defendants lack sufficient personal information to admit or deny the allegations
11 contained in this Section and leave Plaintiff to its proofs.

12 **Elmiron Unsolicited Phone Call #6**

13 Defendants lack sufficient personal information to admit or deny the allegations
14 contained in this Section and leave Plaintiff to its proofs.

15 **Relationship Between the Defendants**

16 Page 19, Lines 1-7 Defendants lack sufficient information on which to form a belief
17 and therefore Plaintiff to its proofs.

18 Page 19, Lines 8-9: Denied.

19 Page 19, Lines 10-18: Defendants lack sufficient information on which to form a belief
20 and therefore Plaintiff to its proofs.

21 Page 19, Lines 19-23: Denied

22 Page 20, Lines 1-3: Denied.

These calls are annoying

1 Defendants lack sufficient personal information to admit or deny the allegations
2 contained in this Section and leave Plaintiff to its proofs.

3 **Joe Delfgauw's Personal Liability**

4 Defendant admits the allegations contained in Page 20, Line 9 but as to the remaining
5 allegations in this section, Defendants lack sufficient information on which to form a belief
6 and therefore leave Plaintiff to its proofs.

7 **Commercial Telephone Solicitors**

8 The RCW speaks for itself.

9 Defendants lack sufficient personal information to admit or deny the allegations
10 regarding Credit Pros and Experian and "other Defendants" contained in this Section and
11 leave Plaintiff to its proofs.

12 **DEFENSES**

13 Defendant JOE DELFGAUW and XANADU MARKETING INC., assert the
14 following defenses

15 1. Ambiguity

16 These answering defendants assert the plaintiff did not clearly state the issues in this
17 case, making it difficult for these answering defendants to fully respond, and therefore ask this
18 Court for leave to amend this answer to assert additional defenses once information is
19 discovered that would allow defenses to be known.

20 2. Sufficiency of Service of Process.

21 As to Defendant XANADU, defendant asserts that service of process on this answering
22 defendant was insufficient.

3. Failure to State a Claim Upon Which Relief Can Be Granted

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1 Plaintiff's complaint fails to state a claim upon which relief can be granted against
2 these answering defendants.

3 4. Standing

4 Mr. Barton has fraudulently manufactured lawsuits with the intent of obtaining money
5 through the misuse of the TCPA and currently has nine active federal cases, which I believe
6 shows bad faith. Mr. Barton is not the type of plaintiff the law was created to protect and
7 therefore, lacks Article III standing to even bring the lawsuit. See *Stoops v. Wells Fargo Bank,*
8 *N.A.*, 197 F. Supp.3d 782 (W.D. Pa. 2016).

9 5. Fraud

10 These answering defendants assert that plaintiff or plaintiff's assignee used fraud,
11 deceit or misrepresentation to invite the contact

12 6. Unclean Hands

13 These answering defendant assert that plaintiff or plaintiff's assignee committed a
14 wrongful act and/or fraud and/or misrepresentation and is attempting to benefit from those acts
15 through this lawsuit.

16 7. Failure to Mitigation

17 These answering defendant assert that neither plaintiff nor plaintiff's assignee on
18 plaintiff's behalf to mitigate his damages.

19 AND NOW having answered the allegations of the Complaint and having pled
20 affirmatively, these answering defendants deny that Plaintiff is entitled to any relief and
21 demands that the Complaint be dismissed at Plaintiff's cost.
22

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COUNTERCLAIM

JOE DELFGAUW and XANADU MARKETING INC, (collectively “Counterclaimants”) file this Counterclaim against NATHEN BARTON (“BARTON”), an in support of their individual and collective Causes of Action state:

I. PARTIES

1.1 Counterclaimant JOE DELFGAUW is a natural person over the age of 18, residing in the Kent County, Michigan.

1.2 Counterclaimant XANADU MARKETING INC. is a domestic profit corporation, formed in the State of Michigan.

II. JURISDICTION AND VENUE

2.1 The original complaint was filed in this venue and jurisdiction.

III. ADDITIONAL FACTS

3.1 Counterclaimants JOE DELFGAUW and XANADU MARKETING INC. are informed and believe and thereon allege that Counterdefendant NATHEN BARTON in or about October 2018 opted into a marketing campaign to receive communication from an entity operated or represented by the Counterclaimants or one of its affiliates.

3.2 Again on or about February 2021, Counterdefendant NATHEN BARTON again opted in to receive information from Counterclaimants or one of their affiliates by providing his phone number. Unfortunately, the Complaint does not specify which number that is.

1 3.3 Counterclaimants and their affiliates retain information and regarding the IP
2 address of individuals that interact with its websites.

3 3.4 Counterclaimants are informed and believe and thereon allege that
4 Counterdefendant NATHEN BARTON provided a fake name when he provided his phone
5 number on the website when opting in to receive information.

6 3.5 Counterdefendant opted in, gave false information, and then waited for contact.

7 3.6 Once Counterdefendant was contacted by Counterclaimants, and other
8 businesses, using a fake area code, so that once his complaint was filed, he could not be
9 traced through his opt-in information.

10 3.7 Counterclaimants are informed and believe and thereon allege that
11 Counterdefendant NATHEN BARTON opted in with the intent to engage Counterclaimants
12 and their affiliates in actions that Counterclaimant intended to use to file lawsuits for
13 violating the TCPA.

14 3.8 Counterclaimants are informed and believe and thereon allege that
15 Counterdefendant NATHEN BARTON had a scheme to “get rid of robocalls” and purposely
16 sought out businesses to sue for his own personal financial gain.

17 3.9 Counterdefendant was in fact, living in Richardson, Texas, in October 2018.

18 3.10 Counterdefendant has filed at least nine similar lawsuits in this and other courts,
19 alleging similar actions.

20
21 IV. CAUSE OF ACTION – FRAUD

22 4.1 Counterclaimants repeat and reallege the allegations set forth in paragraphs 1.1
through 3.10

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1 4.2 Counterclaimants are informed and believe and thereon allege that BARTON
2 used a false name when opting-in.

3 4.3 Counterclaimants are informed and believe and thereon allege that BARTON
4 filed a complaint alleging actions involving a phone number but only stated an area code, for
5 the purpose of hiding the phone number involved so that his true actions could not be traced.

6 4.4 Counterclaimants are informed and believe and thereon allege that BARTON
7 falsely represented this information for the purpose of showing that the messages he received
8 were unsolicited.

9 4.5 Counterclaimants are informed and believe and thereon allege that BARTON
10 represented himself using a false name when he opted-in and to represent to the court in his
11 lawsuit that he had never opted in to receive information, and to induce Counterclaimants
12 (and other businesses) to believe BARTON was interested in marketing communication.

13 4.6 Counterclaimants are informed and believe and thereon allege that BARTON
14 did these actions complained of to further his mission to “take down robocallers”.

15 4.7 Counterclaimants are informed and believe and thereon allege that when
16 BARTON made these representations, he knew they were false.

17 4.8 Counterclaimants are informed and believe and thereon allege that when
18 BARTON made this representation he did so with the intent that Counterclaimants would act
19 on it.

20 4.9 Counterclaimants took their actions in reliance on BARTON’s representations.

21 4.10 Counterclaimants suffered injuries based on the actions of BARTON.
22

V. CAUSE OF ACTION -FRAUD BY NONDISCLOSURE

5.1 Counterclaimants repeat and reallege the allegations set forth in paragraphs 1.1 through 4.10

5.2 Counterclaimants are informed and believe and thereon allege that when BARTON knew or had reason to know that prior to his lawsuit, he affirmatively gave Counterclaimants and/or third parties consent to receive text messages and phone calls from Counterclaimants' and third party providers. BARTON took no action to correct that opt0in information

5.3 To the extent that BARTON did not wish to receive text messages and/or phone calls at the alleged 360 phone number, he intentionally concealed from or failed to disclose that fact to Counterclaimants. Because BARTON was the person with the most knowledge related to whether he wished to receive text messages and phone calls at his phone number, and because he was well aware of potential liability under the TCPA (based on his multiple lawsuits), BARTON had a duty to disclose to Counterclaimants his desire not to receive such contact.

5.4 BARTON's failure to disclose his desire to not receive text messages and phone calls was material because he knew that Counterclaimants had received an opt-in notice from BARTON for the alleged phone number

5.5 By failing to disclose his desire to not receive text messages and phone calls BARTON intended Counterclaimants to fulfill their contractual obligation with third parties who would then send BARTON text messages that all believed had been requested by

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1 BARTON. Counterclaimants expended both employee time and resources to fulfill its
2 contractual obligations based on BARTON's failure to disclose

3 5.6 Despite knowing about BARTON's opt-in and failure to disclose to
4 Counterclaimants that BARTON did not want to receive text messages or phone calls,
5 BARTON claimed that those messages were "unsolicited" in his lawsuit

6
7 **CONCLUSION AND REQUEST FOR RELIEF**

8 Counterclaimants request that the Court enter a judgment that BARTON is liable for
9 common-law fraud and fraud by non-disclosure and award Counterclaimants' actual damages,
10 exemplary damages, interest, costs, attorneys' fees and all other relief that this Court finds fair
11 and just.

12 Dated this 4th day of October, 2021

13 s/Donna Gibson

14 Donna Gibson WSBA 33583
15 Attorney for Defendants
16 JOE DELFGAUW, XANADU
17 MARKETING INC.,
18 Law Office of Donna Beasley Gibson
19 1204 Cleveland Ave
20 Mount Vernon, WA 98273
21 206-242-5529/Fax: 425-332-7068
22 beasleylaw@msn.com
donna@donnagibsonlaw.com

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